IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 15555 of 2003

Between:

B.Mondaiah died per L.R.B.Ramaiah, S/o. Late Mondaiah,
R/o. Tumpalli Village, Asifabad Mandal, Adilabad Dist.

..... PETITIONER

AND

1 The Agent to the Government (The Dist. Collector,) Adilabad
2 The Special Dy.Collector,(TW) Utnoor, Adilabad Dist.
3 The Mandal Revenue Officer, Asifabad Mandal, Adilabad Dist.
4 Smt. Rasool bee died per L.R.Rasheed Khan, S/o. Chand Khan
R/o. Tumpalli Village Asifabad Mandal, Adilabad Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more especially one in the nature of Mandamus declaring the inaction on the part of the first respondent i.e., The Agent to the Government (The Dist. Collector), Adilabad, in not passing any orders in the stay petition int he appeal file No.D4/AG/905/2002 and consequently pass appropriate orders in the interest of justice.

Counsel for the Petitioner: MR.H.VENUGOPAL

Counsel for the Respondents 1 to 3 GP FOR SOCIAL WELFARE

Counsel for Respondent No.4: None appeared

The Court made the following :

O R D E R

This writ petition has been filed questioning the inaction of the 1st respondent i.e. the Agent to the Government (The District Collector, Adilabad) in not passing any orders on the stay application filed in the appeal file No. D4/AG/905/2002.

The case of the writ-petitioner as disclosed in the affidavit filed in support of the writ petition is:

The writ petitioner filed an appeal before the 1st respondent against the orders passed by the 2nd respondent in Case No. TWA1/102/95, dated 22.12.2001. Along with the appeal, he moved stay application under Rule 52 of A.P. Agency Rules seeking suspension of the orders passed by the 2nd respondent. Since no orders have been passed on the said application, the writ petitioner has chosen to approach this Court by invoking the jurisdiction under Article 226 of the Constitution of India.

The 1st respondent filed counter-affidavit. One Saurabh Gaur has sworn to the counter-affidavit. It is stated in the counter affidavit that the petitioner has filed the appeal beyond the period of limitation. I deem it appropriate to refer para-2 of the counter-affidavit and it is thus:-

> " In reply to para-2, it is submitted that the writ petitioner has filed the appeal before the 1st respondent (Agent to Govt. & District Collector, Adilabad) against the orders passed by the 2nd respondent (Spl. Dy. Collector (TW) Utnoor) along with the stay petition on 29.08.2002 which was found this barred. As the orders of the lower court were passed on 22.12.2001, in the file No. TWA1/102/95 are as per rules, the time allowed for filing the appeal to (60) days from the date of orders i.e. upto 22.02.2002. The writ petitioner has stated that the appeal is within limitation from the date of knowledge which is not correct. The E.D. orders were served on the petitioner on 01.02.2002 and possession of the land was taken under panchanama. Thus, the appeal has to be filed on or before 01.04.2002 instead of 29.08.2002. The reasons explained in the Memorandum of Appeal for the delay in filing appeal is not convincing as such in order to provide an opportunity while fixing a date for hearing arguments of counsel for the petitioner, the case was taken up for its admissibility. But due to various other factors and also on administrative reasons the matter could not be heard. After hearing the issue of condonation of delay and registration of appeal only the application could have been taken up for consideration. Subsequently, the case was transferred to this Court and the date of hearing was fixed on 29.09.2003 and on the issue of condemnation of delay, notices were sent for service. After

> hearing the above issue, the case will be registered and orders will be passed on the stay application the basis of the documents produced by the appellant.''

Heard the learned counsel for the petitioner and the learned Government Pleader for Social Welfare appearing for the respondents.

The learned counsel appearing for the petitioner submits that the order copy in File No. TWA1/102/95, dated 22.12.2001, has not been served on the petitioner and, therefore, the date of knowledge is to be taken into consideration for filing an appeal before the appellate authority. This aspect is to be urged before the appellate authority and the appellate authority has to adjudicate upon on it on due consideration of the material placed on record. Since the appellate authority has already issued notice to the writ-petitioner fixing the date for hearing, the writ petitioner is at liberty to appear before the appellate authority and put-forth his pleas. The interim direction issued on 29.07.2003 with regard to the implementation of the impugned order shall continue till the registration of the appeal by the appellate authority.

With the above observations, the writ petition is disposed of. No order as to costs.

_____ B. SESHASAYANA REDDY,J

6th July, 2005

vp.

//TRUE COPY//

SECTION OFFICER

To

1. The Agent to the Government (District Collector,) Adilabad
2. The Special Dy. Collector (TW), Utnoor, Adilabad Dist.
3. The Mandal Revenue Officer, Asifabad Mandal, Adilabad District
4. 2 C.Cs to Govt. Pleader for Social Welfare, High Court buildings, Hyderabad (OUT)
5. 2 C.Ds